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SMIG, NL

SUBJECT: TRAFFICKING IN PERSONS (TIP) REPORT 2009 NETHERLANDS
ANTILLES AND ARUBA-CORRECTED COPY

REF: 2008 STATE 132759

1 . (U) Post is cancelling Curacao 000009 and submitting this corrected TIP response. Post hereby submits the answers to the 2009 annual Trafficking In Persons (TIP) Report questions for the Netherlands Antilles and Aruba:

REPORTING QUESTIONS

12. (U) THE COUNTRY'S TIP SITUATION:

-- A. What is (are) the source(s) of available information on trafficking in persons? What plans are in place (if any) to undertake further documentation of human trafficking? How reliable are these sources?

The Police Departments (which include the immigration departments), the security services of both jurisdictions, the Dutch/Antillean/Aruban joint Dutch-Antillean police cooperation team (RST), Public Prosecutor's Office (PPO), Foreign Offices, Department of Social Development, Women's Desk, and the Coast Guard of the Netherlands Antilles and Aruba (CGNAA) are the enforcement agencies/sources for information on trafficking in persons. In addition, in Aruba the IASA (Alarm and Security Department) and Guarda nos Costa (Department of Coastal Security) are also sources.

In the Antilles, the Directorate of Social Development, based on an IOM survey, has continued initiatives for both a national and regional approach to TIP. There is also a Working Group on Law Enforcement Programs consisting of the Directorate of Judicial Affairs, the PPO, and Department for Development Cooperation and Internal Affairs (all sub-Ministerial) to apply Dutch funding to TIP/alien smuggling policy development and administration.

The Bureau of Women's Affairs of the Curacao Island Government has strengthened the victim-assistance component of the anti-trafficking working group, providing the necessary balance to ensure increased possibilities for successful prosecution of perpetrators of human trafficking.

-- B. Is the country a country of origin, transit, and/or destination for internationally trafficked men, women, or children? Does trafficking occur within the country's borders? If so, does internal trafficking occur in territory outside of the government's control (e.g. in a civil war situation)? To where are people trafficked? For what purposes are they trafficked? Provide, where possible, numbers or estimates for each group of trafficking victims. Have there been any changes in the TIP situation since the last TIP Report (e.g. changes in destinations)?

Aruba and the Netherlands Antilles are constituent parts within the Kingdom of the Netherlands. Both Aruba and the Netherlands Antilles are semi-autonomous and have separate jurisdictions.

Official condoning of the sex industry in the Netherlands Antilles has given rise to individual instances of trafficking, although hard numbers are still difficult to obtain. There are

no concrete indications of human trafficking in Aruba.

Local authorities believe it is likely that both females and males are sometimes trafficked into local domestic servitude as well as into the construction and agricultural (landscaping) industries.

To get a better grasp of the extent of human trafficking in the Netherlands Antilles, the Public Prosecutor's Office has initiated a process to arrive at an analysis of trafficking as a crime, and has continued the development of this process in 2008. It is expected that this will enable the Netherlands Antilles to deal better with the problem of human trafficking.

In Aruba, there are no concrete indications of human trafficking. Up to now the Aruba Public Prosecutor's Office has not brought to trial any cases of human trafficking, nor have there been any complaints submitted in this regard. The Aruba Department of Labor and Research (DLR) has no registered cases of trafficking of persons into domestic servitude, in the construction or agriculture industries.

-- C. What kind of conditions are the victims trafficked into?

Netherlands Antilles authorities believe it is likely that both females and males are trafficked into local domestic servitude as well as into the construction and agricultural (landscaping) industries, with inadequate housing and remunerations that are significantly lower than the legally required minimum.

-- D. Vulnerability to TIP: Are certain groups of persons more at risk of being trafficked (e.g. women and children, boys versus girls, certain ethnic groups, refugees, IDPs, etc.)?

Adult males and females of Latin American/Caribbean origins are probably the most likely groups of persons of being trafficked. There are no indications of minors or specific ethnic groups being trafficked. There are no concrete indications of human trafficking in Aruba.

-- E. Traffickers and Their Methods: Who are the traffickers/exploiters? Are they independent business people? Small or family-based crime groups? Large international organized crime syndicates? What methods are used to approach victims? For example, are they offered lucrative jobs, sold by their families, or approached by friends of friends? What methods are used to move the victims (e.g., are false documents being used?). Are employment, travel, and tourism agencies or marriage brokers involved with or fronting for traffickers or crime groups to traffic individuals?

The Netherlands Antilles are destination points for Colombian and Dominican women, numbering probably 500 or more throughout the five islands of the Netherlands Antilles during any quarter, who come to work as prostitutes. Solicitation of prostitution is illegal, but condoned in certain places, so most activity is confined to brothels. St. Maarten attracts prostitutes from the northern part of the Caribbean, especially from the Dominican Republic. We believe that the overwhelming majority come freely, attracted by the relatively high earning potential. However, there could well be some degree of misrepresentation for some. For example, they may be hired to dance or work in a bar, but are told they will be expected to dance nude, perhaps at extra salary. Some are just underpaid and seek alternatives to earn extra money. Those in the Antilles experiencing this type of misrepresentation is probably limited to 50-75 women. Aruba values its family-oriented tourism destination reputation and closely monitors conditions for prostitution.

The local governments of NA and Aruba are aware that many "dancers" end up working in prostitution. In the past, these "dancers" were allowed to enter Curacao and Aruba on a tourist visa, but that is no longer the case. Post also believes that some Middle Eastern, Asian or South Asian migrants, if the Netherlands Antilles or Aruba is their destination, may pay off their transport through lower wages in ethnic restaurants or businesses. It is very difficult to investigate these suspicions without extensive interviews with reluctant subjects and very

limited resources. Observers agree that the imposition of a visa requirement for Colombians has sharply curtailed all Colombian travel, including unregulated prostitutes. Dominicans also need visas to the NA and Aruba. In 2004, visa restrictions were increased further and virtually all persons except those from the EU, North America and other highly developed countries require visas to enter NA and Aruba. Venezuelans also do not require visas for entry and there is some information indicating that some illegal migrants, particularly from Colombia, are using fraudulent Venezuelan passports. Visa applications received abroad are vetted in Curacao by foreign department officials trained to recognize potential trafficking indicators.

The Dutch Caribbean has no extensive manufacturing or agriculture sector. Both Aruba and the Netherlands Antilles have an active and vigilant trade union sector that closely monitors employment conditions and the employment of immigrants, to preserve employment opportunities for its members. Post does believe there are some cases of men working to pay off passage via labor performed in restaurants, furniture or jewelry stores. In addition, host government officials suspect there are Haitian males employed illegally in the agriculture/gardening sector and there may be several males from throughout Latin America and the Caribbean trafficked into the construction industry. However, these suspicions are based on anecdotal evidence and there are no numbers to back up the claims.

In Aruba a number of migrants work illegally in the construction sector. However, they do so on their own accord and there is no concrete indication that they are trafficked into the construction industry. The IASA (Alarm and Security Department in Aruba, also in charge of the procedures regarding illegal migrants) regularly visits construction sites to inspect the work and the residency permits of the workers and to remove illegal workers from the island.

13. (U) SETTING THE SCENE FOR THE GOVERNMENT'S ANTI-TIP EFFORTS:

-- A. Does the government acknowledge that trafficking is a problem in the country? If not, why not?

While the Governments of the Netherlands Antilles and Aruba admit that illegal immigration and TIP are serious issues and are concerned about trafficking, government officials do not fully recognize trafficking as a major problem in the Dutch Caribbean. Nonetheless a special instruction has been adopted by the Netherlands Antilles Council of Ministers. In Aruba a labor shortage exists, which attracts migrant workers.

-- B. Which government agencies are involved in anti-trafficking efforts and which agency, if any, has the lead?

The Police Departments (which include the immigration departments), the security services of both jurisdictions, the Dutch/Antillean/Aruban joint Dutch-Antillean police cooperation team (RST), Public Prosecutor's Office (PPO), Foreign Offices, Department of Social Development, Women's Desk, and the Coast Guard of the Netherlands Antilles and Aruba (CGNAA) are the enforcement agencies involved in anti-trafficking efforts. In addition, in Aruba the IASA (Alarm and Security Department) and Guarda nos Costa (Department of Coastal Security) are also involved in anti-trafficking efforts. In both jurisdictions, the PPO has the lead in these efforts.

-- C. What are the limitations on the government's ability to address this problem in practice? For example, is funding for police or other institutions inadequate? Is overall corruption a problem? Does the government lack the resources to aid victims?

Funding and staffing for police and judicial offices remains a chronic problem throughout the Netherlands Antilles and Aruba. Allegations and proven instances of corruption in the realm of immigration and work permits exist in both Aruba and the Netherlands Antilles. Various reliable sources tell us that a few government officials have cooperated with those who organize smuggling rings. Moderate wages, inadequate staffing and low morale are the reasons cited for accepting bribes and are the same factors that will hamper aggressive investigatioQto

allegations of smuggling or trafficking. Corrupt officials in the Netherlands Antilles are prosecuted by an aggressive, independent Public Prosecutor's Office.

In Aruba, DIMAS (Directorate of Alien Policy, Admission and Integration) has been tasked with streamlining the issuance of residency and work permits and naturalization procedures there. The Minister of Public Health, Environment, Administrative and Aliens Affairs has overall responsibility for DIMAS. The Cabinet of the Governor of Aruba receives the requests for Dutch naturalization. These requests are submitted to the Immigration and Naturalization Service of the Netherlands (IND), which then processes them. If additional information about a person's legally allowed period of stay in Aruba is needed, the Cabinet of the Governor of Aruba requests DIMAS to provide the necessary information in order to inform the IND.

Also in Aruba, the Public Prosecutor's Office, in cooperation with the National Investigative Division, which investigates allegations of crimes committed by government officials ("Landsrecherche"), actively investigates and prosecutes corrupt government officials. In past years, most court cases involved persons convicted of attempting to bring illegal immigrants into the island by boat. Four Venezuelan citizens were arrested for human smuggling in 2007; they were convicted in March 2008. There were no cases of human trafficking, neither have there been any complaints submitted in this regard.

-- D. To what extent does the government systematically monitor its anti-trafficking efforts (on all fronts -- prosecution, victim protection, and prevention) and periodically make available, publicly or privately and directly or through regional/international organizations, its assessments of these anti-trafficking efforts?

Although both jurisdictions are still in the early phases of their anti-TIP efforts, the government of the Netherlands Antilles has taken a more active role in increasing awareness of the issue. Both jurisdictions are coping with inadequate funding and rising expectations for social spending on their extensive and costly social welfare systems. Both jurisdictions are attempting to rationalize and reform different, but related, funding relationships with the Netherlands and the shortfalls contribute to inadequate staffing and training and heavy workloads for officials. Still, both governments are committed to creating and maintaining conditions to deter TIP. Aruba has improved data collection and analytical capacity to detect possible violations relating to TIP, sex tourism and pornography. The Netherlands Antilles has been a very active participant in IOM TIP training programs over the last few years.

While both the Antillean and Aruba governments strive to better monitor local instances of TIP, consciousness-raising is still the primary focus in both countries. Post expects to see a continuation of such seminars or discussions aimed at wider audiences in coming years. In Aruba the Ministry of Social Affairs has an office that could provide assistance, such as shelter and care, to victims of trafficking. Curacao and St Maarten also offer the opportunity for shelter and care.

14. (U) INVESTIGATION AND PROSECUTION OF TRAFFICKERS:

For questions A-D, posts should highlight in particular whether or not the country has enacted any new legislation since the last TIP report.

-- A. Existing Laws against TIP: Does the country have a law or laws specifically prohibiting trafficking in persons -- both for sexual exploitation and labor? If so, please specifically cite the name of the law(s) and its date of enactment and provide the exact language [actual copies preferable] of the TIP provisions. Please provide a full inventory of trafficking laws, including non-criminal statutes that allow for civil penalties against alleged trafficking crimes (e.g., civil forfeiture laws and laws against illegal debt). Does the law(s) cover both internal and transnational forms of trafficking? If not, under what other laws can traffickers be prosecuted? For example, are there laws against slavery or the exploitation of prostitution by means of

force, fraud, or coercion? Are these other laws being used in trafficking cases?

Netherlands Antilles

The Netherlands Antilles Government Advisory Council received instructions to review the new penal code in late 2008; the majority of changes relate to treaties that have been signed. Special provisions concerning trafficking are planned to be delivered to the Antillean Parliament in 2009. The Advisory Council's work is expected to take approximately six months and to be finished in mid-2009.

Existing provisions of the Netherlands Antilles Penal Code include (NAPC):

Article 203 a The smuggling of persons (P.B. 2003, nr. 65)

1). He who, for profit purposes, helps another to acquire access to, in the sojourning in or departure from the Netherlands Antilles, or who, for profit reasons, gives him the opportunity, resources or information to acquire access to, sojourn, depart from the Netherlands Antilles, knowing or having serious reasons to suspect that the access or stay is illegal, will be punished with a prison sentence up to 4 years or a fine up to NAF. 75.000.

2). He who, for profit purposes, for his own account or for an alien account, directly or indirectly helps a person in acquiring access to, in the sojourning in a country, which is not the Netherlands Antilles, whereby the Netherlands Antilles is used as a transit country, knowing or seriously suspecting that the access to or the stay in that country is illegal, will be guilty of trading in persons and will therefore be punished with a prison sentence up to 4 years or a fine up to NAF.75.000.

3). If this act is committed during the execution of one's function or career the prison sentence will be up to 6 years or the fine up to NAF. 1000000,- and the person concerned can be deprived of his right to fulfill this function or career. The judge can order his verdict to be made publicly known.

4). If more persons commit the act a prison sentence of up to 8 years will be imposed.

Article 260 Trade in women and male minors.

Trade in women and male minors will be punished with a prison sentence of up to five years.

Explanation:

According to the explanation and jurisprudence, this entails the following: 'All acts of which the immediate purpose is to bring a woman into a state of being dependent on others, who want her to be in their power in order to use her for vice with third parties.' These acts entail, amongst others, psychological pressure by e.g. taking away someone's passport, bringing someone into a threatening circumstance by locking him/her up or by illegal authority due to the fact that e.g. the prostitute finds himself/herself in a situation or will find himself/herself in a situation in which he/she does not have his/her own financial means or has high debts because of the trip to Curagao.

Prostitution comprises making oneself available to perform sexual acts with third parties for money; strip tease dancing in a nightclub does not fall under prostitution.

Jurisprudence interpretation of acts:

Jurisprudence 1986, 737: every act of which the purpose is to hand over a woman into prostitution;

Jurisprudence 1992, 716: such an act includes every behavior aimed against a woman, who has voluntarily bound herself into prostitution, with the purpose of hindering her in her freedom to stop with prostitution.

Article 297 Coercion.

A prison sentence of up to two years will be imposed on:

1). A person who, with the use of violence or by means of a violent threat, aimed at another person or a third party, illegally forces the person or third party to do something, not to do something or to tolerate something;

2). A person who, under the threat of defamation, libel or false

witness forces another person to do something, not to do something or to tolerate something;
3). In the case of the clause defined under nr.2 the criminal act will not be prosecuted unless the victim demands it.

Explanation:

The statement under the traffic in women, which comprises unpunishable strip tease dancing, can be punishable. In this case, it must be proven that the person has been forced illegally to do this (if the person has, for instance, signed a contract to do strip tease and afterwards wants to revoke it, the contract itself is not illegal).

If minors are involved:

Article 256 Vice.

1). A person who, by means of gifts or promises of money or goods, the misuse of the authority resulting from an illegal relationship or deception of a minor of unblemished behavior, whose minor age is known to him or he must reasonably suspect, deliberately persuades this minor to commit lewd acts with him or to tolerate such acts from this person, will be punished with a prison sentence of up to eight years.

2). The second, third and fourth clause of article 251 apply accordingly.

Article 257 Vice.

1). The person who commits lewd acts with his minor child, step child, his student, a minor entrusted to his care, education or vigilance or his servant or subordinate of minor age, will be punished with a prison sentence of up to twelve years.

2). This prison sentence includes:

A). The civil servant who commits lewd acts with a person who is under his authority or who is recommended to be entrusted under his vigilance.

B). The director, doctor, teacher, official, supervisor or servant in a prison, reform school, orphanage, hospital, mental institution, charity institution, who commits lewd acts with a member thereof.

C). The person who, employed in health or social care, commits lewd acts with someone, who is his client or patient.

Article 258 Vice.

The following persons will receive a prison sentence:

1). of up to eight years: the person who deliberately causes or encourages the committing of lewd acts by his minor child, step child, student, a minor entrusted to his care, education or vigilance, his minor servant or subordinate with a third party;

2). of up to six years: the person who, outside of the cases stated under nr. 1, deliberately causes or encourages the committing of lewd acts by a minor, whose minor ages this person knows or must reasonably suspect, with a third party.

3). If the guilty person makes the committing of the illegal act a career or habit, the prison sentences can increase by one third.

Article 23 National Ordinance on Admittance and Expulsion.

Third clause:

The person, who hires another person or lets this person perform work activities, and the worker thereby violates this national ordinance, the hirer will be punished with a prison sentence of up to three months or a fine of up to one hundred thousand guilders.

Netherlands Antilles Penal Code Title XVII Crimes against personal freedom (revised penal Code, to be delivered to the Antillean Parliament at the end of 2008.

Article 2.17a Trafficking in persons.

1). The penalty for trafficking in persons is a prison sentence of nine years maximally or a fine in the fifth category.

2). the person who - by means of coercion, violence, the threat of violence, blackmail, fraud, deception, the misuse of authority resulting from violent relationships, the misuse of a vulnerable position, the giving and receiving of payments or profits in order to gain another person's approval and by means of authority over this person - acquires, transports, and gives

the person housing, with the aim of exploiting him/her or removing his/her organs;

3). the person who acquires, transports or houses another person with the aim of exploiting this person or removing his/her organs, while this other person is not yet eighteen;

4). the person, who acquires another person, who takes this person along with him or abducts this person with the aim of persuading this person to make himself/herself available for performing sexual acts with or for a third party at a charge;

5). the person who, by means of one of methods stated under nr. 1., coerces or persuades another person to make himself/herself available to perform labor, services or to make his/her organs available or the person, who performs a certain act under the circumstances mentioned under 1 of which he knows or must suspect that the other person will thereby make himself/herself available to perform labor/services or will make his/her organs available;

6). the person who persuades another person to make himself/herself available to perform sexual acts with or for a third party at a charge or to make his/her organs available at a charge, or the person who, with regard to another person, takes certain actions, of which he knows or must suspect that this other person will thereby make himself/herself available to perform sexual acts or will make his/her organs available at a charge, while this other person is not yet eighteen;

7). the person who profits from exploiting another person;

8). the person, who profits from the removal of another person's organs, while the former person knows or must suspect that the latter person's organs have been removed under the circumstances stated under 1;

9). the person, who profits intentionally from sexual acts by another person with or for a third party at a charge or from the removal of the other person's organs at a charge, while the other person is not yet eighteen.

10). the person, who forces another person with one of methods stated under 1 or who persuades the other person to benefit from the earnings of the other person's sexual performances with or for a third party or from the removal of the other person's organs.

11). Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compelled labor or services, slavery or practices to be compared to slavery or servitude.

12). The guilty person will be punished with a prison sentence of up to twelve years or a fine in the fifth category, if:

A). The crimes defined in the first clause are committed by two or more associated persons;

B). The person, on whom the crimes described in the first clause are committed, has not yet turned sixteen.

C). The crimes, which are described in the first clause and which are committed by two or more associated persons under the circumstances stated in the third clause, section 2, entail a prison sentence of up to fourteen years or a fine in the fifth category.

D). If one of the crimes described in the first clause results in serious physical injury or if the life of another person is feared because of these injuries, the perpetrator can receive a prison sentence of up to sixteen years or a fine in the fifth category.

E). If one of the crimes described in the first clause results in death, the perpetrator can receive a prison sentence of up to twenty-four years or a fine in the fifth category

260NAPC(old);273a NAPC.

Aruba

The Aruban Parliament approved a proposed amendment to the Aruba Penal Code and other existing laws to comply with international treaties. The amendments are based on various UN protocols: the facultative protocol on child trade; child prostitution and child pornography, the International Treaty of Children's Rights; the Treaty against transnational Organized Crime; the Protocol that handles prevention, fight against, and punishment of human trafficking, especially women and children.

In 2003 the Minister of Justice installed a task force to completely revise and update the Aruba Penal Code. Human

smuggling is a crime and punishable with minimum 4 years imprisonment or 100,000 florins fine, which can increase to 15 years imprisonment in cases of death under Article 203a (new) of the Penal Code. Human trafficking is a crime and punishable with minimum 6 years imprisonment or 100,000 florins fine, which can increase to 15 years imprisonment in cases of death, under Article 286a (new) of the Penal Code.

The Aruba Parliament approved a proposed amendment to the Aruba Penal Code (APC) and other existing laws to comply with international treaties, which amendments entered into force in May, 2006 (AB 2006, no. 11). The amendments are based on various UN protocols: the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, the Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime. These amendments made human smuggling a criminal offense, and further amplified the scope of the article about human trafficking (i.e. incorporating forced labor and organ removal).

The above- mentioned Conventions and Protocols entered into force for Aruba in 2006 and 2007.

The smuggling of migrants is a crime and punishable with maximum 4 years imprisonment or 100,000 florins fine, which can increase to 6 years imprisonment if the crime is committed while in office or exercising any profession, to 8 years imprisonment if the crime is committed as a profession or a custom or if it is committed jointly by two or more persons, to 12 years imprisonment if the crime results in serious physical injury or if the life of another person is feared or 15 years imprisonment in cases of death under Article 203a (new) of the Aruban Penal Code. Human trafficking is a crime and punishable with maximum 6 years imprisonment or 100,000 florins fine, which can increase to 8 years imprisonment if the crime is committed by two or more associated persons or the victim has not yet reached the age of sixteen, to 10 years imprisonment if the crime is committed by two or more associated persons and the victim has not yet reached the age of sixteen, to 12 years imprisonment if the crime results in serious physical injury or if the life of another person is feared, or to 15 years imprisonment in cases of death, under Article 286a (new) APC.

-- A. Punishment of Sex Trafficking Offenses: What are the prescribed and imposed penalties for trafficking people for sexual exploitation?

Article 2.17a of the Netherlands Antilles Penal Code makes human trafficking a felony with a maximum prison sentence of nine years or a fine in the fifth category.

Aruba approved an amendment of the Aruba Criminal Code, based on various international protocols including human trafficking and human smuggling. Article 203a of the Aruba Criminal Code makes human smuggling a felony and punishable with a maximum of four years prison and a maximum fine of USD 56,000. Article 286a of the same Code makes human trafficking a felony with a maximum of six years prison or a fine of USD 56,000.

-- B. Punishment of Labor Trafficking Offenses: What are the prescribed and imposed penalties for trafficking for labor exploitation, such as forced or bonded labor? If your country is a source country for labor migrants, do the government's laws provide for criminal punishment -- i.e. jail time -- for labor recruiters who engage in recruitment of workers using knowingly fraudulent or deceptive offers with the purpose of subjecting workers to trafficking in the destination country? If your country is a destination for labor migrants, are there laws punishing employers or labor agents who confiscate workers' passports or travel documents for the purpose of trafficking, switch contracts without the worker's consent as a means to keep the worker in a state of service, or withhold payment of salaries as means of keeping the worker in a state of service?

On 27 April 1953, the Netherlands Antilles declared the ILO Treaty 29 (ban on forced or compulsory labor, 1930) co-applicable. The ILO treaties do not have immediate effect, however, the European Social Charter (enforced for the Netherlands Antilles on May 22, 1980) does. Article 1, clause 2 of the ESC also comprises a ban on compulsory labor. Jurisprudence of the European Commission for the Social Rights concerning this matter is geared towards merchant ships and aviation. ILO Conventions 29 and 105 and the European Social Charter, article 1 paragraph 2, are also applicable to Aruba.

With regard to penal law reference is made to article 297 NAPC. There are no special provisions for recruiters but since they would be collaborating with a criminal act they are punishable too.

Netherlands Antilles law does not have special provisions on the issues mentioned in the second paragraph. There is a provision in the NAPC, however that punishes persons who withhold travel documents of others and who do not make these documents available to the local authorities when requested to do so. There is no information whether this provision is actually enforced or if persons have been convicted based on these provisions but the Minister of Justice in 2007 gave special instructions to immigration authorities not to withhold travel documents provided they are genuine.

In Aruba the applicable provision regarding labor trafficking offenses is article 286 APC and more specifically paragraph 1, under f and paragraph 2. Until now there haven't been any criminal cases in Aruba as regards violation of article 286 APC, neither have there been any complaints submitted in this regard. Labor trafficking is also punishable with maximum 6 years imprisonment or 100,000 florins fine. There are additional penalties for other aggravating circumstances (see paragraphs 3-6 of article 286 APC).

-- C. What are the prescribed penalties for rape or forcible sexual assault? (NOTE: This is necessary to evaluate a foreign government's compliance with TVPA Minimum Standard 2, which reads: "For the knowing commission of any act of sex trafficking . . . the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault (rape)." END NOTE)

In the Netherlands Antilles, the maximum penalty for rape is 12 years while the maximum penalty for forcible sexual assault is eight years. Rape and sexual assault are considered serious crimes. In December 2003 Parliament passed a new law authorizing teachers to report suspected sexual abuse of children 12-16 years of age. Teachers now join parents and guardians in monitoring treatment of children. There is no record of a prosecution of a case of sex or debt-bondage trafficking. In Aruba, the maximum penalty for rape is also 12 years and the maximum penalty for forcible sexual assault is subject to eight years imprisonment. There is no record of any prosecution of a case of sex or debt-bondage trafficking, neither have there been any complaints submitted in this regard. In both jurisdictions, there are additional penalties for other aggravating circumstances, for example, assault of an incapacitated person.

-- D. Law Enforcement Statistics: Did the government prosecute any cases against human trafficking offenders during the reporting period? If so, provide numbers of investigations, prosecutions, convictions, and sentences imposed, including details on plea bargains and fines, if relevant and available. Please note the number of convicted traffickers who received suspended sentences and the number who received only a fine as punishment. Please indicate which laws were used to investigate, prosecute, convict, and sentence traffickers. Also, if possible, please disaggregate numbers of cases by type of TIP (labor vs. commercial sexual exploitation) and victims (children under 18 years of age vs. adults). If in a labor source country, did the government criminally prosecute labor recruiters who recruit workers using knowingly fraudulent or deceptive offers or by imposing fees or commissions for the purpose of subjecting the

worker to debt bondage? Did the government in a labor destination country criminally prosecute employers or labor agents who confiscate workers' passports/travel documents for the purpose of trafficking, switch contracts or terms of employment without the worker's consent to keep workers in a state of service, use physical or sexual abuse or the threat of such abuse to keep workers in a state of service, or withhold payment of salaries as a means to keep workers in a state of service? What were the actual punishments imposed on persons convicted of these offenses? Are the traffickers serving the time sentenced? If not, why not?

In St. Maarten, the local Chief of Police and another high-ranking police officer were detained on February 5, 2008 on charges of immigration violations. The case is still ongoing. In the same month, a businessman of Indian origins was briefly detained on charges of keeping a household servant locked in their house. The servant did not have an employment permit and was paid below the legally required minimum wage standards. In June the businessman was convicted and required to pay the servant's outstanding wages. In May, a brothel owner was convicted to 36 months prison for having held three women who worked in the brothel against their will, of human smuggling and ill-treatment.

There were no cases of prosecution for human trafficking in Aruba during 2008.

-- E. Does the government provide any specialized training for government officials in how to recognize, investigate, and prosecute instances of trafficking? Specify whether NGOs, international organizations, and/or the USG provide specialized training for host government officials.

The government of the Netherlands Antilles has hosted several workshops for those sectors in government involved with the issue. In January 2008, representatives of the U.S. Bureau of Immigration and Customs Enforcement have also hosted a anti-TIP seminar which was attended by a large number of law enforcement officers from various branches. Representatives of the Public Prosecutor's Office and police officers have attended IOM workshops and local officials agree that there should be more emphasis on trafficking and smuggling awareness among police officers. Because of the small population, limited resources and small police departments, there are no specially-trained units dedicated solely to these issues.

Aruba is still in the beginning phases of its anti-TIP efforts. An interdepartmental and interdisciplinary working group against the trafficking and smuggling of persons was established in early 2007, which is working on a plan for counter trafficking and smuggling activities. One of the proposals the working group is to provide training to the relevant departments and to increase awareness.

Representatives of the Aruban government have attended IOM/UNHCR Joint Regional Seminars in the past.

--F. Does the government cooperate with other governments in the investigation and prosecution of trafficking cases? If possible, provide the number of cooperative international investigations on trafficking during the reporting period.

We know of no active investigations being pursued in either jurisdiction or requests for cooperation in either investigations or extraditions from other jurisdictions on the anti-trafficking issue.

The Netherlands Antilles have a cooperation agreement with Suriname

Cooperation with the International Organization for Migration exists as well as formal contacts with the Human Trafficking Coordination Center COMENSHA ("Covrdinatiecentrum Mensenhandel"), formerly called the Dutch Foundation Against Trafficking of Women ("Stichting Tegen Vrouwenhandel") which deals with victims in the Netherlands and a position has been created for a specialized lawyer who represents victims of

trafficking in the Netherlands.

-- G. Does the government extradite persons who are charged with trafficking in other countries? If so, please provide the number of traffickers extradited during the reporting period, and the number of trafficking extraditions pending. In particular, please report on any pending or concluded extraditions of trafficking offenders to the United States.

No evidence available - not applicable.

-- H. Is there evidence of government involvement in or tolerance of trafficking, on a local or institutional level? If so, please explain in detail.

In St. Maarten, the local Chief of Police and another high-ranking police officer were detained on February 5, 2008 on charges of immigration violations, but not specifically human trafficking. The case is still ongoing.

As yet no human trafficking cases have been brought to trial in Aruba.

-- I. If government officials are involved in trafficking, what steps has the government taken to end such participation? Please indicate the number of government officials investigated and prosecuted for involvement in trafficking or trafficking-related corruption during the reporting period. Have any been convicted? What sentence(s) was imposed? Please specify if officials received suspended sentences, or were given a fine, fired, or reassigned to another position within the government as punishment. Please indicate the number of convicted officials that received suspended sentences or received only a fine as punishment.

In St. Maarten, the local Chief of Police and another high-ranking police officer were detained on February 5, 2008 on charges of immigration violations, but not specifically human trafficking. The case is still ongoing.

As yet no human trafficking cases have been brought to trial in Aruba.

-- J. Is prostitution legalized or decriminalized? Specifically, are the activities of the prostitute criminalized? Are the activities of the brothel owner/operator, clients, pimps, and enforcers criminalized? Are these laws enforced? If prostitution is legal and regulated, what is the legal minimum age for this activity? Note that in countries with federalist systems, prostitution laws may be under state or local jurisdiction and may differ among jurisdictions.

In the Netherlands Antilles prostitution is condoned in only one brothel in Curacao which receives regular medical inspections from the Department of Health. Elsewhere prostitution and brothel activities are criminalized in the Netherlands Antilles, although often a blind eye is turned towards them.

In Aruba, prostitution in itself is not a criminal offense. However, the General Police Act (Algemene Politieverordening) contains the following provision (article 49) for the protection of public order and morals:

"Women who are standing or sitting on the public highway or moving back and forth along it and attract the attention of passers-by by any pose, act, or display, and women who are found sitting on pavements or steps between 9 p.m. and dawn shall, if ordered by the police from doing so or to move on, immediately comply with such an order."

This article enables the police to act against women who offer their sexual services on public streets.

Although prostitution itself is not criminalized, intentionally causing or encouraging prostitution is a criminal offense under article 259 APC (AB 2003, no. 47). This article provides that an offender is liable to a prison sentence not exceeding one year or a fine not exceeding one thousand florins. No one was convicted of this offence in the period under review.

In Aruba, the women concerned may only work in a number of approved premises (bars) in the town of San Nicolas. The employer must possess a permit allowing him to bring over and employ a limited number of women as prostitutes. The women working at these bars receive a temporary work permit of 3 months and are subject to regular medical examinations and counseling by the Department of Health. The work permits refer to the women as "bartenders" or "hostesses" ("animeerdames"). Since 2007 only Colombian women were granted such work permits.

-- K. For countries that contribute troops to international peacekeeping efforts, please indicate whether the government vigorously investigated, prosecuted, convicted and sentenced nationals of the country deployed abroad as part of a peacekeeping or other similar mission who engaged in or facilitated severe forms of trafficking or who exploited victims of such trafficking.

The Netherlands Antilles and Aruba do not have nationals deployed abroad as part of peacekeeping or other missions.

-- L. If the country has an identified problem of child sex tourists coming to the country, what are the countries of origin for sex tourists? How many foreign pedophiles did the government prosecute or deport/extradite to their country of origin? If your host country's nationals are perpetrators of child sex tourism, do the country's child sexual abuse laws have extraterritorial coverage (similar to the U.S. PROTECT Act) to allow the prosecution of suspected sex tourists for crimes committed abroad? If so, how many of the country's nationals were prosecuted and/or convicted during the reporting period under the extraterritorial provision(s) for traveling to other countries to engage in child sex tourism?

The Netherlands Antilles and Aruba are not known as child sex tourism sources or destinations. To date, no foreign pedophiles have been prosecuted or deported/ extradited.

15. (U) PROTECTION AND ASSISTANCE TO VICTIMS:

-- A. What kind of protection is the government able under existing law to provide for victims and witnesses? Does it provide these protections in practice?

Under the legal system, witnesses would be able to provide anonymous testimony in certain limited cases, which is a form of protection. Or, the victims may be allowed to give testimony or statements from abroad, i.e. from their home countries or another safe location. On a case-by-case basis, discretionary safe haven can be provided.

-- B. Does the country have victim care facilities (shelters or drop-in centers) which are accessible to trafficking victims? Do foreign victims have the same access to care as domestic trafficking victims? Where are child victims placed (e.g., in shelters, foster care, or juvenile justice detention centers)? Does the country have specialized care for adults in addition to children? Does the country have specialized care for male victims as well as female? Does the country have specialized facilities dedicated to helping victims of trafficking? Are these facilities operated by the government or by NGOs? What is the funding source of these facilities? Please estimate the amount the government spent (in U.S. dollar equivalent) on these specialized facilities dedicated to helping trafficking victims during the reporting period.

Victims receive some assistance through a combination of government agencies and NGOs in the Netherlands Antilles, among others the Bureau for Aid to Victims in Curacao and the Women's Desk in St. Maarten. If the assisting organization learns about a victim of trafficking, it will attempt to assist this person and provide the pertinent information to the Netherlands Antilles TIP Commission. The assisting organizations will provide guidance, if necessary in cooperation with a consular representative of the victim's country of origin or with the Directorate of Foreign Relations, for the victim's voluntary return to his country of origin. In 2007, the Netherlands Antilles TIP Commission was established. It consists of

representatives of the Ministry of Justice, the Police Department, NGOs, the Health Department, the Council of Churches, and the Foundation for Child Protection.

There are no specific victim health care facilities in the Netherlands Antilles but health care providers employed by the government are used when their specific expertise is needed.

-- C. Does the government provide trafficking victims with access to legal, medical and psychological services? If so, please specify the kind of assistance provided. Does the government provide funding or other forms of support to foreign or domestic NGOs and/or international organizations for providing these services to trafficking victims? Please explain and provide any funding amounts in U.S. dollar equivalent. If assistance provided was in-kind, please specify exact assistance. Please specify if funding for assistance comes from a federal budget or from regional or local governments.

Some NGOs receive government subsidies in general to fulfill their tasks. The working group and the TIP Commission receive assistance of those government agencies that in general provide assistance to victims of other crimes, such as for example battered women.

-- D. Does the government assist foreign trafficking victims, for example, by providing temporary to permanent residency status, or other relief from deportation? If so, please explain.

Victims receive some assistance through a combination of government agencies and NGOs in the Netherlands Antilles, among others the Bureau for Aid to Victims in Curacao and the Women's Desk in St. Maarten. The assisting organizations will provide guidance, if necessary in cooperation with a consular representative of the victim's country of origin or with the Directorate of Foreign Relations, for the victim's voluntary return to his country of origin.

-- E. Does the government provide longer-term shelter or housing benefits to victims or other resources to aid the victims in rebuilding their lives?

Victims receive some assistance through a combination of government agencies and NGOs in the Netherlands Antilles, among others the Bureau for Aid to Victims in Curacao and the Women's Desk in St. Maarten. The assisting organizations will provide guidance but there are no long-term shelter or housing benefits.

-- F. Does the government have a referral process to transfer victims detained, arrested or placed in protective custody by law enforcement authorities to institutions that provide short- or long-term care (either government or NGO-run)?

With regard to a victim's legal protection in the Netherlands Antilles, the island governors are the local heads of the police departments. They have the authority to issue temporary residency status for humanitarian considerations and, depending on the victim's mental condition, an exemption of the possession of a work permit applies (article 3 under c of the National Ordinance Aliens Labor, Publication 2001, no. 82). The Public Prosecutor's Office and the Netherlands Antilles Police Department give consideration to the extent to which criminal acts committed during the phase of misuse/victim of trafficking in persons can be dismissed.

-- G. What is the total number of trafficking victims identified during the reporting period? Of these, how many victims were referred to care facilities for assistance by law enforcement authorities during the reporting period? By social services officials? What is the number of victims assisted by government-funded assistance programs and those not funded by the government during the reporting period?

There are no numbers with regard to trafficking victims.

-- H. Do the government's law enforcement, immigration, and social services personnel have a formal system of proactively identifying victims of trafficking among high-risk persons with

whom they come in contact (e.g., foreign persons arrested for prostitution or immigration violations)? For countries with legalized prostitution, does the government have a mechanism for screening for trafficking victims among persons involved in the legal/regulated commercial sex trade?

Reports of trafficking victims originate almost always from the victims themselves. In such cases, social services personnel as well as NGOs will investigate these cases and their circumstances. In the Netherlands Antilles prostitution is condoned in only one brothel in Curacao; post is not aware of any mechanisms for screening for trafficking victims.

-- I. Are the rights of victims respected? Are trafficking victims detained or jailed? If so, for how long? Are victims fined? Are victims prosecuted for violations of other laws, such as those governing immigration or prostitution?

The social climate and Dutch-based legal cultures here would work to prevent victims from being treated as criminals. We know of no case in which a victim of actual trafficking has been detained, jailed, or deported, although deportation is common in illegal immigration and employment round-ups. Illegal immigrants and those found without work permits, including U.S. citizens, are often detained until there is space on a flight to their point of origin. Illegal migrants often come to the attention of authorities through violations of other laws such as narcotics smuggling. Although authorities are working to increase the sensitivity of police officers to the difference between illegal immigrants and possible victims of trafficking, honoring the distinction is a work in progress.

-- J. Does the government encourage victims to assist in the investigation and prosecution of trafficking? How many victims assisted in the investigation and prosecution of traffickers during the reporting period? May victims file civil suits or seek legal action against traffickers? Does anyone impede victim access to such legal redress? If a victim is a material witness in a court case against a former employer, is the victim permitted to obtain other employment or to leave the country pending trial proceedings? Are there means by which a victim may obtain restitution?

Victims are encouraged to come forward, but government officials acknowledge that because most victims of trafficking are present in the respective countries illegally, they are reluctant to make complaints. Victims are permitted to leave the country.

-- K. Does the government provide any specialized training for government officials in identifying trafficking victims and in the provision of assistance to trafficked victims, including the special needs of trafficked children? Does the government provide training on protections and assistance to its embassies and consulates in foreign countries that are destination or transit countries? What is the number of trafficking victims assisted by the host country's embassies or consulates abroad during the reporting period? Please explain the type of assistance provided (travel documents, referrals to assistance, payment for transportation home).

The Netherlands Antilles government has provided training to individual prosecutors and members of the islands' police departments, but awareness is still in the early stages and there is no systematic training program in place. As both the Netherlands Antilles and Aruba are represented abroad by Embassies and Consulates of the Kingdom of the Netherlands, we defer to the Kingdom Embassies regarding the training provided to Dutch diplomats in identifying the problem abroad.

-- L. Does the government provide assistance, such as medical aid, shelter, or financial help, to its nationals who are repatriated as victims of trafficking?

We know of no cases in which nationals of either jurisdiction have been victims of trafficking who have been repatriated.

-- M. Which international organizations or NGOs, if any, work with trafficking victims? What type of services do they provide?

What sort of cooperation do they receive from local authorities?

Close cooperation exists with the International Organization for Migration with the Netherlands Antilles in terms of training, but this organization does not work directly with trafficking victims in the Netherlands Antilles and Aruba. Services are provided by a combination of government agencies and NGOs.

Aruba is still in the beginning phases of its anti-TIP efforts. The interdepartmental and interdisciplinary working group against the trafficking and smuggling of persons is working on a plan for counter trafficking and smuggling activities, and will also look into these issues. Direct assistance to trafficking victims will probably have to be provided by a combination of government departments and relevant NGOs.

16. (U) PREVENTION:

-- A. Did the government conduct anti-trafficking information or education campaigns during the reporting period? If so, briefly describe the campaign(s), including their objectives and effectiveness. Please provide the number of people reached by such awareness efforts, if available. Do these campaigns target potential trafficking victims and/or the demand for trafficking (e.g. "clients" of prostitutes or beneficiaries of forced labor)? (Note: This can be an especially noteworthy effort where prostitution is legal. End Note.)

Netherlands Antilles Minister of Justice David Dick continued to be firmly committed to combat human smuggling throughout the Netherlands Antilles. In 2008, his office continued a publicity campaign started in 2007, aimed at prevention to deal with the issue. The International Organization on Migration (IOM), through its work worldwide with migrants, noticed that human smuggling is an issue in the Netherlands Antilles and came to the same conclusion in its investigation "Exploratory assessment of trafficking in persons in the Caribbean region" of June 2005.

The Dutch Ministry of Justice made funds available for the Netherlands Antilles to participate in the IOM's publicity campaign. Throughout the year, counter-trafficking working groups have been distributing counter-trafficking posters and brochures provided by IOM as part of a regional information campaign to raise public awareness. Within Curacao and St. Maarten, specifically, the posters and brochures are being distributed in Dutch, English, Papiamentu, and Spanish. The working group established in 2007 continued to provide information on human smuggling and human trafficking throughout all media channels.

Aruba is still in the beginning phases of its anti-TIP efforts. An interdepartmental and interdisciplinary working group against the trafficking and smuggling of persons was established in early 2007, and continues to work on a plan for counter-trafficking and smuggling activities, including anti-trafficking information or education campaigns.

-- B. Does the government monitor immigration and emigration patterns for evidence of trafficking?

The Antillean and Aruban Governments admit to an immigration problem and clearly have difficulty policing the borders, but do not conclude that this problem extends to sex trafficking or debt bondage. Neither government is in total control of its borders, given complaints about illegal migration and narcotics smuggling, but improvements continue. It is difficult to guard the perimeter of the five islands of the Netherlands Antilles and the island of Aruba. Curacao alone has more than thirty secluded beaches with gentle, warm Caribbean waters, allowing undocumented aliens to swim ashore if they chose. St. Maarten, located 550 miles from Curacao and much closer to Puerto Rico and the U.S. Virgin Islands, is particularly attractive to US-bound migrants. Together, the six islands equal an extensive coastline and local authorities do not have sufficient equipment or manpower to prevent illegal entry. A new radar system with sophisticated software to detect smuggling has been set up and is operational for Curacao, Bonaire, and Aruba and is operated by the Coast Guard of the Netherlands and Aruba (and the IASA in

Aruba). The Netherlands Antilles and Aruba have set up inter-agency task forces to coordinate comprehensive post-9/11 security reforms, some of which will improve the monitoring of migrants and borders.

As a matter of policy, the Netherlands Antilles continues to use the visa process to impose increased control, limits and requirements on certain employment categories subject to abuse. For example, 'dancers' are no longer considered to be in short supply and pre-certified, but are now required to present labor permits, requiring contractual, insurance and salary commitments, at the pre-arrival visa interview. Increasing resources are being dedicated to alien smuggling that may develop leads in the future.

Aruba is reportedly assessing the difference between regular and irregular migration patterns and the implications of both. Some measures for managing migration are currently underway, including legislative changes, an anti-corruption initiative and a strategic assessment of its system.

-- C. Is there a mechanism for coordination and communication between various agencies, internal, international, and multilateral on trafficking-related matters, such as a multi-agency working group or a task force?

In the Netherlands Antilles, the Working Group on the Trafficking of Women, consisting of representatives from the Directorate of Foreign Relations, Public Prosecutor's Office (PPO), Cabinet of the Island Governor, Police Department (including Immigration), Bureau for Victim Support, and the NGO Contrasida (AIDS awareness), coordinates trafficking-related matters. The Working Group, which developed out of the Antilles participation in the December 2003 Conference of Mixed Migratory Flows in the Caribbean Region, discovered that TIP awareness and victim outreach is best executed in conjunction with the NGO Contrasida's regular outreach to brothels regarding anti-AIDS education. One problem identified and being addressed, with support from the PPO, is to provide temporary protected legal status to those prostitutes who might wish to pursue a charge of abuse against their employers. The Bureau for Victim Support ("Slachtoffer-Hulp") provides assistance to victims of all criminal acts and is developing a TIP-specific policy.

In St Maarten, the PPO resurrected a dormant law that encourages female victims of abuse to recover damages (physical or mental) from perpetrators and opened a Bureau of Victim's Aid. A Judge can order a defendant to deposit funds in a bank account established for the victim. Brochures are available at medical clinics, drug stores and other shops, NGOs and police stations. On a case-by-case basis, the authorities are prepared to provide safe-haven to established victims of TIP. St. Maarten has an active domestic/sexual violence center that offers shelter, treatment, judicial assistance and a 24/7 call center. There is an active NGO and grass-roots community structure in the Dutch St. Maarten, but such has not identified the need for a dedicated anti-TIP campaign. Domestic violence is by far the more immediate issue.

By the end of 2006, formal interagency working groups were operating in Bonaire, Curacao, Saba, St. Eustatius, and St. Maarten. In addition to conducting awareness-raising activities, these groups are comprised of key stakeholders from government agencies, NGOs, and law enforcement agencies and are essential to creating a well-balanced victim assistance network and are the point of first contact in the referral system. The working groups in Curacao and St. Maarten received resources through IOM small grants in 2006 to support year-long strategies for building victim assistance networks and outreach.

Aruba is still in the beginning phases of its anti-TIP efforts. An interdepartmental and interdisciplinary working group against the trafficking and smuggling of persons has been established, which is working on a plan for counter trafficking and smuggling activities.

-- D. Does the government have a national plan of action to address trafficking in persons? If the plan was developed during

the reporting period, which agencies were involved in developing it? Were NGOs consulted in the process? What steps has the government taken to implement the action plan?

There was no national plan of action in 2008, but in January 2009 a Memorandum of Understanding was signed by the Justice Ministers of the Netherlands and Netherlands Antilles on "Human Trafficking, Human Smuggling and Illegal Immigration in the Netherlands, Netherlands Antilles and Aruba." The Justice Minister of Aruba still has to sign this MOU.

-- E: What measures has the government taken during the reporting period to reduce the demand for commercial sex acts? (see ref B, para. 9(3) for examples)

No data available - not applicable.

-- F. Required of all Posts: What measures has the government taken during the reporting period to reduce the participation in international child sex tourism by nationals of the country?

Not applicable.

DUNN